



# State of Louisiana

## Department of Environmental Quality



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M.J. "Mike" Foster  
Governor

J. Dale Givens  
Secretary

February 25, 2002

Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor  
Post Office Box 94397  
Baton Rouge, LA 70804-9397

Dear Dr. Kyle:

This letter is the response of the Louisiana Department of Environmental Quality (LDEQ) to the performance audit conducted at the department over the last several months. Furthermore, LDEQ's response to each of the recommendations can be found in Attachment 1 of this response.

Beginning in 1998, LDEQ undertook a business process reengineering effort that involved the total redesign of our core business processes in order to achieve gains in efficiency and effectiveness. During the same time frame, we began work on a massive project to consolidate all electronic data and paper files into one integrated system. The impetus behind these changes was that our commitments were growing, our resources were shrinking, and we needed a way to proactively manage our workload.

Throughout our efforts, a common theme kept arising: Our commitments far exceed our resources. A prime example is R.S. 30:2012, which requires that LDEQ conduct an inspection of all permitted facilities annually. In the audit report, your staff stated it "...may be unreasonable to expect the department to conduct that many inspections on every permitted facility." We agree with this statement. Despite all our efforts in streamlining and standardizing, it is next to impossible for LDEQ to meet this commitment. As such, reengineering and integrating our data was a step taken to augment our resources so that they would be more in line with our commitments.

We have accomplished quite a bit since 1998, yet we fully understand that there is still much to do. An important goal of our work to date is to ensure continual improvement. There are many tools we use towards that end. These tools include peer review, quality assurance and control procedures, and internal audits. This performance audit provides additional information for us to consider in our evaluation efforts. However, since a performance audit is a subjective process, there are several areas of the audit report with which we disagree and other areas that require further explanation. Moreover, it

should be noted that the majority of the audit recommendations involve issues of which we are fully aware and are currently addressing.

### **General Comments**

An integral part of our commitment to continual improvement is our work towards ISO 9000 and ISO 14000 certification. As you may know, both of these management systems use a proven process of Plan-Monitor-Adjust-Plan in order to maximize outcome and limit negative impact. An integral part of ISO certification is the existence of accurate and concise Standard Operating Procedures (SOP). Over the past two years, we have written hundreds of exhaustive SOPs that delineate the responsibility of all employees involved in a process. Using these SOPs and the work from reengineering, we wrote comprehensive job descriptions. These steps were taken to ensure employees fully realize their responsibilities and associated accountability.

In several areas of the audit report, your staff states that the reengineering efforts and the use of the new information systems may have negatively impacted the morale and productivity of this department. We have found the exact opposite. A true barometer of this situation is documented in the Exit Interview Forms of employees who have left this department for another job. When asked the reason(s) for leaving, not a single employee responded that it was due to the changes we have made. In fact, we have seen a decrease in the turnover of our technical staff and expect that trend to continue. Through reengineering, we have given our employees a stake in the success of the department and they have responded with positive results.

### **Objective 1: LDEQ's Monitoring Functions**

#### **Information Systems**

In early 1998, we realized that if we were to succeed with the necessary reengineering of our department, we would need to reorganize along functional lines. Logic dictated that it was necessary to integrate our data from several different media-specific systems into one holistic system. Based on this need, we developed our Integrated Data Management System. The two main components are our electronic data application known as Tools for Environmental Management and Protection Organizations (TEMPO) and our records management tool known as the Electronic Document Management System (EDMS).

TEMPO is the center of the entire Integrated Data Management System. It allows us to maintain all electronic data pertaining to Agency Interests (i.e., facility, site, plant, etc.) in our Master File. From there, we have the ability to compile and track permits,

compliance evaluations, and enforcement actions. However, before we can fully capitalize on this functionality, we must first ensure that all Agency Interests are in our system. We are methodically addressing this issue media by media. We have completed this task in some areas (e.g., Radiation and Solid Waste) and are in transition in others (e.g., Air and Water). For those areas in which we are in transition, it is absolutely necessary to maintain legacy systems for parallel assurance.

The EDMS is our tool to manage our electronic documents and is part of a larger comprehensive records management system. The EDMS is populated with Agency Interest files that are digitally scanned, indexed, and reconciled. ALPS™ is our search and retrieval application within the EDMS that allows us to define search criteria and locate documents. It is important to note that we are bringing together several different filing systems that had little if any references in common. A good example of this is some filing systems used a permit number as the primary reference, another system used parish, and yet another used the facility name. Further differences included the structure of the files. In some systems, all documents were kept in one facility folder, whereas in another system, the permit was kept in a facility folder and all inspections for that facility were kept in a separate facility folder elsewhere. Once again, we are methodically addressing these issues one media at time and are conforming all to a single standard.

### **Permit Issuance Commitments**

When the state received authorization for the water program from EPA, LDEQ agreed to issue permits to those facilities governed by federal and state regulations. At the time of program assumption, EPA passed on a permitting backlog of approximately 50% of the universe of major facilities, and over 80% of the minor facilities. EPA was never capable of handling this workload in their permitting program, thus a backlog was created. Prior to program assumption, EPA placed little emphasis on the issuance of minor permits. LDEQ has acted on the rationale that minor facilities present a potential for pollution and therefore, permit issuance for them must be addressed.

In Exhibit 2 of the audit report, your staff indicated that we issued water permit coverage to only 221 facilities during the calendar year 2000 and 135 in calendar year 2001. In actuality, by the use of EPA-approved general permits, we permitted an additional 458 facilities in calendar year 2000 and 342 in calendar year 2001. These numbers exceed the permit issuance commitments made to EPA for this two year period.

LDEQ has developed a strategy to reduce the water permit backlog. This strategy was presented to EPA Region 6 in May 2000. That document has been revised to reflect current concerns and the final FY 2002 version will be submitted to EPA very shortly. LDEQ developed this strategy to comply with EPA's national goal to eliminate the

backlog of permits for major facilities by the end of FY04 and eliminate the backlog of permits for minor facilities by FY05. We expect to meet this goal.

EPA approved Louisiana's Title V Air Permitting Program on October 12, 1995. Of the 834 Initial Title V Permit applications that we have received since the start of the program, LDEQ has issued 519. This leaves us with 315, or 38% left to issue. We are currently working on a plan to facilitate the issuance of the remaining Initial Title V permits. We have submitted a plan to EPA to issue the remaining Initial Title V permits by December 31, 2003.

The audit states that 24% of Initial Title V permits have expired. Per LAC 33:III.507.E.3, if the company sends in a complete renewal application within six months of expiration, the facility's right to operate is not terminated upon permit expiration. The Air Permit Application (current version dated June 12, 2001) requires the company's Responsible Official (LAC 33:III.502) to certify that the company and facility referenced in the application will comply with new requirements that have compliance dates effective during the permit term on a timely basis.

### **Solid Waste Temporary Permits**

LDEQ acknowledges that many temporary permits for solid waste facilities have been issued since 1993. As a product of agency reengineering, we have made an effort to resolve the issues surrounding these temporary permits. Several months ago we began a project to develop a list of all the solid waste facilities that have permit actions pending. Some of the facilities on this list have temporary permits. This list shows the order number, the date issued and any resolution that has been made since it was originally issued. All of these temporary permits are being entered into TEMPO. Each facility will be reviewed to determine its current status and a decision will be made on how we will proceed in the permitting process.

### **Surveillance Activities**

Section 30:2012.A of the Environmental Quality Act requires that inspections be timely and meaningful. LDEQ strives to conduct as many high-quality inspections as possible. In targeting facilities for inspection, those that were permitted, but never built, closed, or were not in operation would not be inspected. In some instances some of the facilities noted as not being inspected, were inspected, but the date of the inspection fell outside the chosen fiscal year time frame by one, two or three weeks and were not counted as having been inspected. This is a staff resource issue that the department continues to address.

## **Objective 2: LDEQ Enforcement Functions**

### **Areas of Concern Versus Violations**

The LDEQ's policy of having field inspectors note "areas of concern" in their reports is not new. In an effort to achieve the highest success rate possible during enforcement proceedings, the department has reemphasized the importance of following this guidance across different media inspections and complaint investigations. The procedure is taken from the Environmental Protection Agency guidance on compliance investigations and is located on their web site at the address listed here ([www.epa.gov/ebtpages/comcomplinvestigation.html](http://www.epa.gov/ebtpages/comcomplinvestigation.html)).

The EPA procedures specifically state that inspections are intended to identify "areas of regulatory concern" and should not make statements regarding violations one way or the other. As stated in the EPA guidance, "you would be making an institutional decision without using the system of checks and balances built into the program". The inspector should avoid making any compliance conclusions. LDEQ believes this is consistent with the Environmental Quality Act.

The inspector must be an objective observer and witness of fact. The EPA further explains this reasoning. "The first reason is based on legal ethics. The inspector is the witness of fact and may not be the program compliance case reviewer. If the inspector makes compliance determinations, two things may happen: (1) it places the inspector in the position of being the cop as well as the judge; and (2) it opens a door for emotional or personal bias. A system where there is a division of job roles easily prevents this. The second reason is practical. Usually the program or counsel determines if there is documentation of a violation or not. If you have made a violation determination in the field that was inappropriate, you may have caused unjust expense to the facility that responded to your allegations. Your unilateral decision in the field may limit the decisions available to the agency. If you told the facility, 'There were no problems' and the agency determines that there were, the agency might have to mitigate its decision considerably based on your statements. You may also subject yourself to personal liability."

The Surveillance Division refers areas of concern (AOC) identified during inspections to the Enforcement Division for evaluation. Not all AOCs addressed are necessarily violations, but areas where the facility may need improvement. The AOCs are reviewed and compared to the regulations to determine if the facility is out of compliance, and if an enforcement action is warranted or needed to bring the respondent back into compliance. In many cases, the AOCs identified are found not to be violations. As such, the issuance of an enforcement action would not be appropriate. The Enforcement Division documents via TEMPO those AOCs that do not warrant an enforcement action.

## **Timeliness of Enforcement Actions**

The audit report does not clearly represent all of the activities involved in taking an appropriate enforcement action. A comprehensive file review is conducted during this process. Any noncompliance which has not been previously addressed in a formal enforcement action is included in the action. For example, isolated effluent excursions may not merit an enforcement action, but when combined with inspection violations an enforcement action may be appropriate. This can result in an enforcement action that addresses violations that may have occurred in the past. LDEQ does not believe that this in any way compromises the integrity of its enforcement program, but rather allows for a more comprehensive accounting of violations.

Furthermore, the audit report states that auditors were unable to calculate the timeliness of air enforcement actions because they could not obtain the dates of violations addressed by the enforcement actions without obtaining the actual action. The Enforcement Division is able to provide the dates of violations.

## **Penalties**

Due process under the law is an important principle when dealing with penalties. When a penalty assessment is issued by LDEQ, there are several options that can legally be taken by a respondent in accordance with the Environmental Quality Act. These include the following:

- The respondent may request an adjudicatory hearing. As per section 2050.4 of the Act, upon issuance of a penalty assessment, the respondent has a right to request an adjudicatory hearing. If the hearing request is granted, the penalty assessment is suspended until the adjudicatory hearing process is complete. During the hearing process, the Secretary, with the concurrence of the Attorney General, may settle the penalty assessment as per section 2050.7 of the Act.
- If the hearing request is not granted, the respondent is entitled to *de novo* review of the Secretary's action in the 19<sup>th</sup> Judicial District Court for East Baton Rouge Parish. If the respondent is dissatisfied with the ruling by the 19<sup>th</sup> JDC, he has a right of appeal to the 1<sup>st</sup> Circuit Court of Appeal.
- If a respondent does not request a hearing, the penalty is due within 15 days of the assessment. If the respondent fails to pay the final assessment, an attorney for LDEQ will, with the concurrence of the Attorney General, file an *ex parte* motion with the 19<sup>th</sup> JDC to have the assessment made executory (i.e. an enforceable order of the court).

### **Beneficial Environmental Projects (BEPs)**

A Beneficial Environmental Project is a project that provides for environmental mitigation, which the respondent is not otherwise legally required to perform, but which the respondent agrees to undertake as a component of a settlement of a violation or penalty assessment. The Beneficial Environmental Projects (BEP) regulations (LAC.33:I Chapter 25) were promulgated in August 2000. Each BEP submitted by a respondent is reviewed extensively by the department's technical and legal staff and must meet the requirements set forth in the regulations. In addition, each approved BEP is public-noticed and submitted for concurrence to the Attorney General prior to finalization.

To date, the 17 BEPs approved since August 2000, have totaled approximately \$9,600,000 and are providing a variety of benefits to the environment. These include:

- Through the state and federal settlement agreements finalized in 2001, Motiva Enterprises agreed to perform several BEPs including: donation of \$280,000 to the Lower Mississippi River Interagency Cancer Study (LMRICS); \$750,000 to perform the Community Ambient Air Monitoring Project over three years; \$3,000,000 to perform flaring reduction over three years; \$1,000,000 for enhancements of Louisiana's overall air quality monitoring network; \$250,000 for enhancements of LDEQ's Mississippi River Early Warning Organic Compound Detection System (EWOCDS).
- The City of Lafayette has agreed to perform the following BEPs approved in March 2001: \$15,000 for conducting six seminars in conjunction with ULL's Business and Industry Training Department focusing on pretreatment requirements for eating establishments and \$5,000 for the "Household Hazardous Waste Project" in which the respondent mailed out approximately 60,000 bill stuffers to provide helpful tips for handling household hazardous waste and aired 30-second radio spots concerning proper handling and disposal of hazardous waste. These projects will help promote public awareness for the proper disposal of household hazardous wastes.

There are many other examples that demonstrate the effectiveness and value of the Beneficial Environmental Project program. The overall positive impact of these projects will continue to be substantial for the citizens and the environment.

### **Objective 3: Complaint Resolution Process**

LDEQ strives to address all complaints and releases as quickly as possible and preferably within 5 working days of receiving notification. The LDEQ believes that responding to complaints within 5 days is being accomplished, but resolution of complaints can take much longer. Due process of law as outlined within section 2025 of the Environmental Quality Act involves time and opportunity for respondents to appeal actions. Additionally, action by the department may be delayed or not occur at all if there is an inadequate finding of fact to support an enforcement action. LDEQ acknowledges that the quality of data entry into TEMPO (the time period covered by the audit included complaints received before TEMPO was fully functional) was not of sufficient quality to capture and verify the required information to support a 5-day response conclusion.

### **Other Issues**

#### **LDEQ's Document Management System**

Prior to re-engineering, each LDEQ environmental program (media) maintained records in several disparate paper filing systems (at last estimate, LDEQ's records consisted of over 25 million pages). There was no continuity between any of the filing systems, some of which were inherited from other agencies when LDEQ was first created. In fact, retrieving records on a facility required visiting multiple file rooms or placing public records requests with the custodian of record for each media. Review of records was limited to one individual at a time.

The imaging project began in 1998, and in April 2000, LDEQ hired a full time Records Manager and established a Records Management Section. During Fall 2001, we studied the public's use of ALPS™. Visitors complimented Records Management staff, ALPS™, and our initiative in studying their needs. While the design and implementation of a comprehensive records management program for LDEQ is a work in progress, many significant accomplishments have already been achieved.

Our accomplishments to date include:

- Through the imaging project, all LDEQ facility files that have been imaged are now accessible from a single system.
- In October 2000, LDEQ established the Public Records Room for use by the general public with computer workstations configured to search the LDEQ electronic document management system (EDMS). Staff is on duty Monday through Friday, 8:00 a.m. to 4:30 p.m. to provide personalized help with searching for records and/or



completing public records requests. On average, 150 people per month visit the Public Records Room.

- The Records Management Section is the point of contact for all public records requests. Last year, over 2000 public records requests were received and filled by LDEQ.
- To better understand EDMS users' needs, a recent study was conducted to compare the information needs of the LDEQ user to the non-LDEQ user. Findings from the study are being used to develop a user-friendly Internet-based search tool. A key finding of the EDMS user study revealed that non-LDEQ users who relied on assistance from Public Records Room staff were successful in finding the records they sought.

There are also several initiatives on the horizon. These include:

- An Internet-based EDMS search tool that will greatly increase access to LDEQ public records is currently under development.
- Steps are being taken to address past filing and classification inconsistencies. An in-depth study of EDMS indexing practice and potential is planned for Spring 2002.
- In order to minimize the continuation of paper filing problems in the electronic system, LDEQ personnel review Air Quality files prior to scanning.

LDEQ fully understands the need of the public and its employees to have access to public records and makes every effort to ensure the availability of these records. We are committed to the continuous analysis and improvement of our records management program.

## **LDEQ's Invoicing Process**

Prior to the reengineering of LDEQ, the responsibility for invoicing rested with eight different groups throughout the department. Previous attempts to reconcile outstanding invoices were made by these groups with varying degrees of success. However, as part of reengineering, LDEQ has consolidated all invoicing responsibility into the Financial Services Division, thus providing a centralized invoicing group for the first time in the history of LDEQ.

In parallel with our reengineering efforts to standardize the invoicing process, we also began the reconciliation of outstanding invoices. In consolidating the necessary information for a ten-year period beginning in Fiscal Year 1992, we found the following:

- During the ten-year time frame, LDEQ invoiced \$360,334,489.31.
- During the ten-year time frame, LDEQ applied \$349,432,186 to the invoiced total.
- Over that same ten-year span, \$10,902,303 in invoices was determined to be outstanding.

This represents a 97% collection rate or reconciliation rate.

Based on this information, the first issue we addressed was to improve our reconciliation rate to 100%. As such, the initial approach was to focus on those companies whose invoices totaled greater than \$5,000 and try to reconcile those first. Based on our work beginning in mid FY 2001 to date, we have accomplished the following:

- We have initiated at least a first contact with the responsible party on those outstanding invoices greater than \$5,000 that total \$5,159,314.
- Of that total we have been able to reconcile \$2,866,324 in the following categories:
  - Over/Mis-billing: \$1,028,941,
  - Bankruptcies: \$669,013,
  - No Longer in Operation: \$218,766, and
  - Payments: \$949,604.

These numbers represent a 41% reconciliation of outstanding invoices. And, for those invoices that were sent in error, we have found that the activity for which the company had been invoiced was no longer in effect, i.e., the facility had ceased those operations for which a permit was required. For some of these companies, they were never deleted from a billing system and were continually incorrectly invoiced until such time

they were removed from the system. Our work to reconcile these outstanding invoices is ongoing.

Our next responsibility is to ensure that this does not happen again. To this end, we are currently transitioning our invoicing databases into the TEMPO system. This will allow us the following functionality:

- LDEQ will now have one system for annual permit maintenance and activity based billing.
- All information necessary for billing will be contained in TEMPO.
- Since TEMPO contains effective start dates and end dates for permits, we will now have the ability to invoice for currently effective activities.
- Late payment fees will be assessed automatically.
- All invoices that remain unresolved will be automatically forwarded to the Violation list to be addressed with the appropriate remedial action.

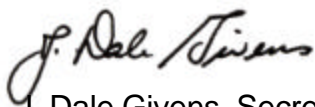
A large part of the department's operating budget is contingent upon our fee system. As such, the department fully realizes the importance of invoicing accurate fees and collecting those fees in a timely manner. The department will continue in its efforts to standardize and improve its invoicing process.

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In conclusion, I am proud of the accomplishments of the Louisiana Department of Environmental Quality. Through the efforts of every employee of this department we have made great strides in effectively managing the environment of this State. We are firmly committed to continuous improvement and will constantly strive to meet the needs of the citizens of Louisiana.

Thank you for this opportunity to respond.

Sincerely yours,



J. Dale Givens, Secretary  
Louisiana Department of Environmental Quality

## **Appendix A: LDEQ's Response to Recommendations**

**Recommendation 1:** LDEQ should ensure that all of its data systems contain complete, up to date, and accurate data on all facilities that it regulates.

**Management's Response:** LDEQ is actively working toward making sure all regulated facilities in each media are accounted for in LDEQ's electronic system known as Tool for Environmental Management and Protection Organizations (TEMPO). A major attempt to consolidate all LDEQ legacy systems into one overall departmental system was initiated by developing TEMPO. Our goal is to establish TEMPO as the primary information management system for this department.

**Recommendation 2:** LDEQ should develop and follow a plan to meet its permit issuance commitments to EPA and to renew expired permits according to its established schedule.

**Management's Response:** LDEQ is currently working on a plan to facilitate the issuance of the remaining 315 Initial Title V air permits as well as issuing renewal permits. We have committed to EPA to issue the remaining initial permits by December 31, 2003. The department has also entered into negotiations with EPA for a National Level of Effort contract, in which federal dollars will be used to engage a contractor to assist in the drafting of major and minor water permits over a two-year period. Until these negotiations are complete, LDEQ is utilizing all available resources to issue as many water permits as possible in a responsible fashion.

**Recommendation 3:** LDEQ should establish an accurate and reliable method to track solid waste temporary permits.

**Management's Response:** As a result of our business process reengineering efforts within the agency, LDEQ has worked to resolve issues surrounding these temporary permits. We acknowledge that many temporary permits have been issued since 1993. Before the audit, we began a project to develop a list of all the solid waste facilities that have permit actions pending. Each facility is being reviewed to determine its current status and a decision will be made as to how we will proceed with the permitting process. Some of these facilities have completed all of the necessary steps required for permit issuance and a final permit decision will be made for these facilities. All of these permits are being entered into TEMPO.

**Recommendation 4:** LDEQ should develop a policy for inspecting facilities with air permits.

**Management's Response:** LDEQ currently has a procedure in place to inspect facilities with air permits. Management staff in each of the six regional offices has been provided with the EPA "Compliance Monitoring Strategy" (CMS) for air quality inspections. Regional management staff develops their own annual list of sources to inspect since they are in the best position to determine what sources need the most attention. These plans are reviewed by HQ staff for level of effort purposes and incorporated into the department's operational plan. Headquarter's staff focused current planning to stress inspecting large industrial sources annually, inspecting a high number of sources in the non-attainment areas of the State, and inspecting smaller sources based upon types of pollutants emitted and on complaint and upset history.

**Recommendation 5:** LDEQ should implement a policy to review self-monitoring data for air and water.

**Management's Response:** LDEQ currently has an established procedure in place to review self-monitoring data submitted by permitted entities for air and water. These procedures have identified noncompliant facilities and have resulted in the referral of many noncompliant facilities for enforcement action.

**Recommendation 6:** LDEQ should implement a system to routinely review annual emissions statements for exceedances of permitted limits. LDEQ should consider tracking variances electronically in order to easily determine if those exceedances were allowed by LDEQ.

**Management's Response:** LDEQ will take steps to initiate a process for the review annual emissions statements for exceedances of permitted limits.

**Recommendation 7:** LDEQ should either revise its performance indicator on the timeliness of enforcement actions or include an explanatory footnote that explains what enforcement actions are being reported on.

**Management's Response:** LDEQ's Operational Plan documents the performance indicator currently reported by the Enforcement Division for percent of applicable enforcement actions addressed within the prescribed time periods called for by appropriate state and/or federal guidelines. The explanation to further define the applicable timeframes used by each media was prepared prior to FY 00-01 and included the following:

- High priority air violations will be addressed within 270 days of confirmation of violations;
- Significant noncompliance water violations will be addressed within 150 days of being reported;
- Hazardous waste significant noncompliance violations will be addressed within 180 days of inspection dates or EPA approved timeline extensions;
- Radiation, solid waste, and underground storage tank violations will be addressed within 180 days of receipt of referrals.

**Recommendation 8:** LDEQ should ensure that enforcement actions are issued consistently among media.

**Management's Response:** The Enforcement Division continuously evaluates the enforcement process for all media to ensure consistency and has made improvements in the consistency of enforcement among all media since reengineering. Each media reviews its program referrals on a case-by-case basis in accordance with the applicable regulatory requirements to determine if a violation has occurred and the appropriate enforcement response. In addition, LDEQ considers the nine factors required by the Environmental Quality Act when evaluating the referrals for all media.

**Recommendation 9:** LDEQ should not approve BEPS where the penalty and the BEP is less than the original penalty.

**Management's Response:** LDEQ disagrees with this recommendation. There are several possible reasons why it may be in the best interest of the State to settle a penalty for less than the original amount, whether a BEP is included or not. These include, but are not limited to:

- Discussions with the respondent reveal mistakes of fact, mistakes of law, inadequate evidence, or other weaknesses in the LDEQ's penalty assessment, which would justify a reduction of the penalty or make it unlikely that LDEQ could obtain a favorable decision for the full amount of the penalty if the matter was litigated.
- Settlement allows LDEQ to avoid the significant delays involved in litigation. Given that LDEQ enforcement actions are subject to 4 possible levels of review (adjudicatory hearing at the Division of Administrative Law; appeal to the 19<sup>th</sup> Judicial District Court; appeal to the Court of Appeal, 1<sup>st</sup> Circuit; and Supervisory Review by the Louisiana Supreme Court), a final decision is usually delayed at least a full year, and frequently much longer, delaying any environmental benefit or remediation.
- Settlement allows LDEQ to conserve public funds, which otherwise would be expended on litigation costs, and instead utilize those funds in ways more directly beneficial to the environment.
- Settlement allows LDEQ to avoid the significant uncertainty involved in litigation. LDEQ enforcement actions can be, and frequently are, reversed, modified, and/or remanded at all levels of the appellate process. Furthermore, even if LDEQ prevails and obtains a final order or judgment in its favor, collecting the penalty can often be difficult. A solvent respondent may refuse to pay, forcing LDEQ to locate and seize assets through judicial process. An insolvent respondent may have inadequate assets to pay, and participation in the bankruptcy process may be LDEQ's only means of collecting any part of the penalty. The result is extended delays in implementing environmental corrections.

**Recommendation 10:** LDEQ should require that facilities submit evidence of economic benefits, including tax savings, as part of future BEP settlement agreements.

**Management's Response:** LDEQ will take this recommendation under consideration.

**Recommendation 11:** LDEQ should require all facilities to submit reports outlining the completion date and documentation on the net amount spent on BEPs. LDEQ should also physically inspect projects to ensure their completion.

**Management's Response:** The department is currently doing this. LDEQ's settlement agreement standard language in use since mid-2001 requires the following information and reports concerning BEPs:

- A full description with the amount to be spent and a timeline for completion for each approved BEP in the finalized settlement agreement;
- Submittal of progress reports regarding the progress of each approved BEPs. These reports must include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each BEP through the date of the report.
- Submittal of a final report, upon completion of each BEP, which must include a summary of all the information previously submitted and a certification that the project was completed as described.

In addition, BEPs are inspected on a case-by-case basis when appropriate by the surveillance staff.

**Recommendation 12:** LDEQ should issue enforcement actions within its established timeframes.

**Management's Response:** The Enforcement Division's performance indicator for issuance of enforcement actions within the appropriate timeframes as outlined in our Operational Plan is being met. We strive to meet this goal each quarter. Because of manpower constraints, we are not able to issue all enforcement actions within the appropriate timeframes and must prioritize the referrals to issue enforcement actions for the more severe violations within the performance indicator timeframes.

**Recommendation 13:** LDEQ should ensure that it resolves complaints timely.

**Management's Response:** LDEQ endeavors to address all complaints and releases as quickly as possible and preferably within 5 working days of receiving notification. LDEQ believes that responding to complaints within 5 days is being accomplished, but resolution of complaints can take much longer. Again, due to manpower constraints, it is necessary that we prioritize complaints balanced against inspections to ensure we are addressing those matters with the largest environmental impact.



**Recommendation 14:** LDEQ should properly address violations discovered during complaint investigations.

**Management Response:** It should be noted that areas of concern are discovered during complaint investigations and not violations. The Enforcement Division does evaluate the complaints based on the supporting evidences and addresses all areas of concern that are deemed to be violations.

**Recommendation 15:** LDEQ should closely monitor all records management functions to ensure that records are properly stored both physically and electronically and are easily accessible.

**Management's Response:** LDEQ is indeed committed to the continuous analysis and improvement of its records management program. While the design and implementation of a comprehensive records management program for LDEQ is a work in progress, many significant accomplishments have already been achieved. For example, as a result of the imaging project, all LDEQ facility files that have been imaged are now accessible from a single system searchable in the Public Records Room and soon to be available via the Internet. To ensure consistency, the quality of each of these images is reviewed according to a seven-point checklist before it is accepted into this system.

**Recommendation 16:** LDEQ should establish a uniform billing and collection mechanism that ensures that companies are properly billed and that they make timely payments.

**Management's Response:** LDEQ is currently transitioning its invoicing databases into the TEMPO system. As a result, TEMPO will now be the department's consolidated billing and collection system. All information necessary for permit maintenance and activity billing will be contained in TEMPO. And, since effective start dates and end dates for permits will be contained in the system, LDEQ will now have the ability to invoice for all currently effective activities. Furthermore, late payment fees will be assessed automatically and invoices that remain unresolved will be automatically forwarded to the Violation list to be addressed with the appropriate remedial action.